

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH HESTER, #351036,

Petitioner,

v.

Case No. 14-cv-10419

HON. MARK A. GOLDSMITH

BONITA HOFFNER,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR A CERTIFICATE OF
APPEALABILITY AND APPLICATION TO PROCEED IN FORMA PAUPERIS ON
APPEAL (Dkts. 13, 14) AND TRANSFERRING THOSE PLEADINGS TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

This matter is before the Court on Petitioner's motion for a certificate of appealability (Dkt. 14) and application to proceed in forma pauperis on appeal regarding the denial of his petition for a writ of habeas corpus (Dkt. 13). The Court, however, denied a certificate of appealability and denied leave to proceed in forma pauperis on appeal in its opinion denying Petitioner's habeas claims. See 12/17/2015 Op. & Order at 11-12 (Dkt. 10). Consequently, the Court shall construe Petitioner's current motion as a request for reconsideration of those decisions. See, e.g., Jackson v. Crosby, 437 F.3d 1290, 1294 n. 5 (11th Cir. 2006); Lyons v. Lafler, No. 2:10-CV-11386, 2013 WL 812083, *1 (E.D. Mich. Mar. 5, 2013). The Court finds no reason to reconsider its prior decision.

A motion for reconsideration which presents issues already ruled upon by the Court, either expressly or by reasonable implication, will not be granted. Hence v. Smith, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999). Such is the case here. Petitioner has not met his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a different

disposition must result from a correction thereof, as required by Local Rule 7.1(h)(3). Accordingly, the Court denies Petitioner's motion and application.

When a district court denies a certificate of appealability and denies leave to proceed in forma pauperis on appeal, the proper procedure is for the habeas petitioner to file a motion for a certificate of appealability and an application to proceed in forma pauperis on appeal with the appellate court. See Sims v. United States, 244 F.3d 509 (6th Cir. 2011) (citing Fed. R. App. P. 22(b)(1)). Accordingly, in the interests of justice, the Court transfers Petitioner's motion for a certificate of appealability and application to proceed in forma pauperis on appeal to the United States Court of Appeals for the Sixth Circuit.¹

SO ORDERED.

Dated: January 26, 2016
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on January 26, 2016.

s/Karri Sandusky
Case Manager

¹ The Court notes that Petitioner filed a notice of appeal (Dkt. 12) at the time he filed the instant motion and application.